Supreme Court, U.S.
FILED
JAN 20 198
JOSEPH F. SPANIOL, JR.
CLERK

86-1225

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ROBERT L. KRAUSE,

Petitioner

v.

MARK K. KIM, M.D. d/b/a)
MARK K. KIM, M.D., P.A.)
and METROPOLITAN MEDICAL)
CENTER, a Corporation)
)
LAWRENCE A. FARBER, M.D.)
and NORAN NEUROLOGICAL)
CLINIC, P.A.),

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

Robert L. Krause
Attorney Pro Se
8131 Westwood Hills Drive
St. Louis Park, MN 55426
(612) 545-3931

January, 1987

QUESTION PRESENTED

Petitioner, proceeding pro se in two (consolidated) civil lawsuits alleging medical malpractice and other causes of action, was subjected to:

a. The denial of his request for a continuance of a hearing on a motion to dismiss which had been brought untimely under Minnesota Rules of Civil Procedure for District Courts.

b. The failure by the District Court to have hearing on summary judgment and dismissal motions reported and transcribed by a court reporter.

c. The granting of a motion to dismiss based on the unilateral affidavit of opposing counsel, claiming Petitioner had not named expert witnesses.

d. The failure of the District Court to consider evidence properly tendered by Petitioner in connection with summary judgment proceedings.

e. The failure of the District Court, upon Petitioner's Motion for Relief from Judgment and Rehearing, to:

   i) Deal with the motion in light of Rule 60.01 and

60.02;

ii) Have the entire hearing reported and transcribed by a Court Reporter (as requested by Petitioner);

iii) Compel the Court Reporter to prepare, certify and file a transcript of the part of the hearing that she reported, which had been duly ordered and paid for by Petitioner, as required by Minnesota Rules of Civil Appellate Procedure.

f. Failure of Appellate Courts of Minnesota to acknowledge that Petitioner's Motion to Vacate and for Rehearing was based on Rule 60.02 as well as Rule 60.01, Minn. Rules of Civil Procedure for District Courts.

Under the circumstances referred to above, was the Petitioner deprived of rights protected by the:

1. First Amendment to the U.S. Constitution guaranteeing the right to petition the government for the redress of grievances, in that Petitioner's cases were dismissed before all relevant facts and arguments could be presented.

2. Due process clause of the Fourteenth Amendment to the United State Constitution, in that procedural rules of court designed to apply to all litigants in Minnesota were ignored in dealing with Petitioner.

3. Equal Protection clause of the Fourteenth Amendment to the United States Constitution in that Petitioner, a pro se litigant, was not afforded the uniform application of the rules of court as required.

4. Seventh Amendment to the United State Constitution and the Minnesota Constitution, Sec. 4, guaranteeing the right to trial by jury, in that summary despositions of Petitioner's cases were made before all relevant

facts were available through the discovery process.

LIST OF PARTIES

The parties to the proceedings below were the Petitioner, Robert L. Krause, and the Respondents, Mark K. Kim, M.D., d/b/a Mark K. Kim, M.D., P.A. and Metropolitan Medical Center, a Corporation, in one case, and, in a related, consolidated, case, the Petitioner, Robert L. Krause, and the Respondents, Lawrence A. Farber, M.D. and Noran Neurological Clinic, P.A.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
LIST OF PARTIES	vii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT	14
REASONS FOR GRANTING THE PETITION	23
CONCLUSION	35
APPENDIX A--Constitutional and Statutory Provisions	A-1
APPENDIX B--The Decisions Below	B-1

TABLE OF AUTHORITIES

CASES:

Cin. v. Cin, 372 NW 2d 10 (Minn. App. 1985)	28
Moses v. Hoebel, Okl. 646 P 2d 601 (1982)	33
Osborne v. President, Directors & Co. of Bank, 22 U.S. 738, 6 L. Ed. 204 (1884)	23
Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 435. Ct. 190, 67 L. Ed. 340	32
State v. Schwab, (Or) 600 P 2d 387, 24 ALR 422, 428 (1979)	31

CONSTITUTION, STATUTES AND RULES:

Code of Professional Responsibility	31
Minnesota Constitution	30
Minnesota Code of Judicial Conduct	31

Minnesota Rules of Civil
Appellate Procedure
Minnesota Rules of Civil 21, 28,
Procedure for District Courts 29, 33
United States Constitution 30

TREATISE:

7 Am Jur 2d, Attorneys at Law §6 23

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ROBERT L. KRAUSE,

Petitioner

v.

MARK K. KIM, M.D. d/b/a)
MARK K. KIM, M.D., P.A.)
and METROPOLITAN MEDICAL)
CENTER, a Corporation)
)
LAWRENCE A. FARBER, M.D.)
and NORAN NEUROLOGICAL)
CLINIC, P.A.),

Respondents.

The Petitioner, Robert L. Krause, respectfully prays that writ of certiorari issue to review the Order of the Minnesota Court of Appeals filed June 4, 1986.

OPINIONS BELOW

The Opinion of the Minnesota Court

of Appeals, filed June 4, 1986, is reprinted in the appendix hereto.

The District Court decision, filed March 21, 1986, is reprinted in the appendix hereto.

The Minnesota Supreme Court decision, filed August 20, 1986, declining to review, is reprinted in the appendix hereto; and its Order deny ing Petitioner's motion for reconsideration, dated September 22, 1986, is reprinted in the appendix hereto.

JURISDICTION

The final order of the Minnesota Supreme Court was entered September 22, 1986. On December 16, 1986, Mr. Justice Blackmun extended the time for filing Petition for Writ of Certiorari to and

including January 20, 1987. The jurisdiction of this Court is invoked under 28 U.S. Codes, Sec. 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

1. United States Constitution

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free excercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by

a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. State of Minnesota Constitution, Article 1

§4. Trial by jury

Sec. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict.

3. Minnesota Rules of Civil Procedure for District Courts

RULE 60. RELIEF FROM JUDGMENT OR ORDER

Rule 60.01. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on

the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 60.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment (other than a divorce decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons: (1) Mistake, inadvertance, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.03; (3) fraud (whether heretofore denominated intrinsic

or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceedings was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order,

or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

4. Minnesota Rules of Civil Appellate Procedure, Rule 110.02

Subd. 2. Transcript Certificate. If any part of the proceedings are to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to

the trial court and all counsel of record within 10 days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; and a statement that satisfactory financial arrangements have been made for the transcription. Upon delivery of the transcript to the appellant, the reporter shall file with the clerk of the appellate courts a certificate evidencing the date of delivery.

5. Minnesota Code of Judicial Conduct, Canon 3, A.(4)

(4) A judge should accord to every person who is legaly interested in an proceeding, or his lawyer, full right to be heard according to law, and, consider ex parte or other communications con-

cerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonalbe opportunity to respond.

6. Code of Professional Responsibility, Canon 7,

EC 7-35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary procedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one

party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if thereis none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7-36. Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity

and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-38. A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be

punctual in fulfilling all professional commitments.

STATEMENT

This Petition relates to two cases Petitioner commenced in District Court, Hennepin County, Minnesota. The relevant facts are as follows:

A. Krause v. Farber; et al.

From on Feb. 23, 1978 until about November 8, 1980, Petitioner was a patient for medical care and treatment of Respondents Farber and Noran Neurological Clinic in connection with injuries Petitioner sustained in an automobile accident in 1976. Dr. Farber had agreed to provide expert testimony on Petitioner's behalf in a lawsuit Petitioner had commenced for the damages he sustained in the 1976 accident. In July, 1980, Petitioner was seen by Dr. Farber at the Noran Clinic, and was told

by Dr. Farber to return for further examination and treatment in January, 1981, following review by Dr. Farber of x-rays, neck-scan, radiologists' reports, and other medical reports from Abott-Northwestern Hosptial. On or about Nov. 10, 1980, Petitioner learned, to his surprise, by reading Dr. Farber's deposition given October 31, 1980, that Dr. Farber's deposition given October 31, 1980, that Dr. Farber had misled Petitioner and had done the acts complained of in Petitioner's Complaint. Petitioner then and there decided to terminate the doctor-patient relationship between said Defendants and himself.

Within two years of that incident, Petitioner caused to be served on each Respondent a Summons and Complaint. Thereafter, discovery commenced. All

parties, including Petitioner, responded to various discovery requests, although Petitioner has received negligible cooperation from Respondents in obtaining meaningful discovery. Petitioner was deposed. No party ever served a Trial Note Of Issue. No trial date was ever set. Discovery has not been completed.

The Respondent's Summary Judgment motion heard December 27, 1984, was based on two arguments: 1) That Petitioner's action was barred by the statute of limitations; and 2) That summary judgment should be granted because Petitioner had not identified an expert witness necessary to create a prima facie case of medical malpractice. The Court's decision was based solely on the statute of limitations issue.

The day prior to the hearing,

Petitioner made a written request for a continuance. The request was renewed on the date of the hearing. The request was not granted.

The proceeding was not reported, and the parties have differing recollections of what transpired at the hearing.

B. Krause v. Kim; et al.

In December, 1979, Respondent Kim (upon referral from Dr. Farber) treated Petitioner at Dr. Kim's Pain Clinic at the Metropolitan Medical Center, Minneapolis, Minnesota, with the final in-office treatment occurring on December 24, 1979. Treatments included nerve block and acupuncture procedures. After these treatments, further treatments were suspended pending delivery of a report to Dr. Farber (which Dr. Kim promised to send immediately). This report, dated March 1, 1980, included

false and incorrect statements injurious to Petitioner.

Petitioner sustained injuries as a result of said treatments and said report, and accordingly brought suit, delivering Summons and Complaint to the Hennepin County Sheriff's Office for service on December 9, 1981. Metropolitan Medical Center was served on December 18, 1981, but Respondent Kim, although employed at said institution, was not served there, although efforts were made. The Summons and Complaint were forwarded to Carver County Sheriff when the Hennepin County Sheriff determined that Dr. Kim resided just outside the Hennepin County limits. Dr. Kim was then served by the Carver County Sheriff on January 15, 1982.

After January 15, 1982, Respondent served their Answer, and discovery com-

menced. All parties, including Petitioner, responded to discovery requests, although Petitioner received negligible cooperation from Respondents in obtaining meaningful discovery. Respondent Kim and Petitioner were were deposed, as was Frank Larkin, Administrator of Metropolitan Medical Center. No party ever served a Trial Note of Issue. No trial date was ever set. Discovery has not been completed.

Both cases were consolidated for pretrial proceedings and/or trial by Court Order. Motions for Summary Judgment and for Dismissal were heard on December 27, 1984. The Motion of Respondent Metropolitan Medical Center was undisputably not timely filed.

No record was made at the hearing, and the parties have differing recollections of that proceeding.

The day prior to the hearing, Petitioner made a written request for continuance. The request was renewed on the date of the hearing. The request was not granted.

On January 21, 1985, the District Court entered its Order: 1) Granting the motions for summary judgment; 2) directing that Petitioner's Complaint be dismissed as to Metropolitan Medical Center, if certain interrogatories were not answered within 20 days. Petitioner filed his response on February 14, 1985, and subsequently supplemented it with the required information. However, the Court dismissed Petitioner's action against Metropolitan Medical Center, based on Respondent's Affidavit.

Judgments entered against Petitioner and in favor of each of the Respondents.

Petitioner filed Appeals with the Appellate Courts in Minnesota, which were rejected.

Petitioner also filed, in a timely and appropriate manner, a Motion, relating to both cases, Motions pursuant to Rule 60.01 and 60.02 for Rehearing and Relief from Order and Judgments. Petitioner's arguments included, inter alia, that relief should be granted "...in the Interest of Justice, Upon Considerations of Due Process, Equal Protection, and Fundamental Fairness."

The District Court failed to address any of Petitioner's arguments relating to Rule 60.02, and ignored the Equal Protection and Due Process of Law issues entirely. Accordingly, Petitioner appealed the District Court's Ruling, carrying to the Appellate Courts the Constitutional arguments.

The Minnesota Courts of Appeals failed to address the various issues raised on appeal, and erroneously characterized the appeal as relating solely to clerical errors. As a result, that Court mistakenly concluded that the Order appealed from was non-appealable. The Minnesota Supreme Court denied Petitioner's Petition for Further Review and Petitioner's Motion for Reconsideration.

Petitioner's substantial Constitutional arguments were implicitly and explicitly prenseted through all levels of proceedings, consistently and throughout the issues of the disparate treatment accorded him as Plaintiff Pro Se, and stressing his right to have his action heard, on their merits, by a jury.

REASONS FOR GRANTING THE PETITION

> A natural person who is a party to an action may appear in his own proper person or by attorney.
>
> 7 Am Jur 2d, Attorneys at Law §6

The right of an individual to represent himself in Court is well established. Osborne v. President, Directors & Co. of Bank, 22 U.S. 738, 6 L. Ed. 204 (1824).

This right to appear "pro se" is at the very heart of the issues raised in this Petition for Writ of Certiorari.

From the outset of the litigation, Petitioner's efforts to obtain discovery were thwarted at the same time extensive and unreasonable demands were placed upon Petitioner. A review of the voluminous District Court files will illustrate this.

In December, 1984, the Respondents filed and served Motions for Summary Judgment and/or dismissal. The motions of two of the Respondents, for Summary Judgment, met the 10 day notice requirement under the applicable Rules, but, due to week-ends and Christmas Holidays, allowed Petitioner only 2 or 3 work days to prepare for hearings on which all Petitioner's claim could be lost. Access to law libraries, photocopying equipment, etc., was very limited during this period. Accordingly, Petitioner, following proper procedure, tendered a written request for a continuance.

The continuance request also applied to Respondent Metropolitan Medical Center's motion to dismiss, scheduled for the same date. That motion was not served in a timely fashion. That is undisputed. Despite

the unfairness of the District Court ignoring its own rule regarding advance notice for hearing motions; despite the fact that motions for continuances under such circumstances are routinely granted; and despite Petitioner's proper, written request for a continuance, renewed orally in Court prior to the hearing, no continuance was granted, and Petitioner, feeling ill and unprepared, had to respond to two summary judgment motions and a dismissal motion with his lawsuits "on the line."

The court granted the summary judgment motions as to all Respondents except Metropolitan Medical Center, and agreed to dismiss Petitioner's complaint as to that Respondent unless Petitioner would provide sufficient information to satisfy said Respondent regarding

Petitioner's expect witness(es). Petitioner subsequently supplied what he believes to be sufficient information (all the information he had at that point), but apparently that was not sufficient, and the action was dismissed.

On appeal, Petitioner learned that the hearing had not been reported by a Court Reporter. This was devastating to Petitioner's appeal because of conflicts in recollections by the attorneys and Petitioner regarding the admission of documents, discussions concerning the requested continuance, and other matters.

In short, Petitioner's substantial lawsuits were destroyed at hearing which should not have been held and at which Petitioner cannot prove what transpired. The Court, in ruling against Petitioner, disregarded evidence properly tendered

by Petitioner concerning when the parties to the the actions were served, e.g., when delivery to the Sheriff was accomplished. More importantly, the Court presumed dates when various statutes of limitation commenced to run before all discovery hearing on those issues had been completed. At this stage, depositions were still being ascheduled (Dr. Farber had not yet been deposed), yet the Court determined, without all the facts yet in, in effect that all claims were for medical malpractice (they weren't) and that the statute of limitations started running on the last occasion the Petitioner had been in the doctors' examining rooms. The District Court's over-simplification of the case was fatal to Petitioner's causes of action.

The appellate courts failed to take

a hard look at the lower court's decision, and affirmed the District Court. Petitioner timely petitioned the District Court for Relief from the judgments, and for Rehearing under Rules 60.01 and 60.02 of the Minnesota Rules of Civil Procedure for District Courts. Rule 60.01 pertains to clerical errors. Rule 60.02 pertains to mistake, inadvertance, excusable neglect, fraud, etc. Petitioner sought relief under both provisions of the Rule. The District Court and the Minnesota Appellate Courts ignored or missed the fact that Petitioner also sought relief under 60.02. The case relied on by Respondents and the Minnesota Court of Appeals, Cin v. Cin, 372 N.W. 2d 10 (Minn. App. 1985), determined that an order denying a motion to set aside a judgment because of clerical error under

Minn. R. Civ.P. 60.01 is not an appealable order. It did not conclude that the denial of a motion under 60.02 was not appealable.

One reason the Appellate Court failed to examine sufficiently the issue raised in Petitioner's appeal from the denial of his Motion under Rules 60.01 and 60.02 was because it did not have a transcript of the proceedings below.

The District Court initially refused Petitioner's request to have the Motion hearing reported by a Court Reporter, but, part-way through the hearing acceded and had a Court Reporter take down the latter part of the proceedings. On appeal, Peititioner ordered and paid for transcript. Petitioner received an uncertified transcript fraught with errors. He requested, in timely fashion, the

certified transcript required under the appellate Rules. Despite numerous requests, the transcript was never filed nor delivered to Petitioner.

Peitioner's litany of disparate treatment is extensive. As a whole, they have resulted in a denial to Petitioner of his right under federal and Minnesota Constitution to effectively petition to obatin redress of grievances, and to have his claims determined, on the merits, by jury trial. Although Petitioner is representing himself in this matter, he has consulted with various attorneys during the course of these proceedings, and has in fact had counsel represent him in the initial appeals to the Minnesota Court of Appeals. Whether with or without hired counsel, Petitioner should be entitled to the same treatment and courtesies,

and thus have the same opportunity to present his case.

> We recognize that no law consistant with the First Amendment could limit to licensed professionals the right to petition the government for redress of grievances State v. Schwab, (Or) 600 Pzd 387, 24ALR 4th 422 (1979)

see Code of Professional Responsibility (in effect in Minnesota during these proceedings), Ethical Considerations (EC) 7-35, 36 and, especially 38. See also Minnesota Code of Judicial Conduct, Canon 3, A. (4).

U.S. Supreme Court has correctly stated:

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person

within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445, earlier case of Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 350, 352, 38 S.Ct. 495, 62 L.Ed. 1154, 1155.

The State Courts have a duty, grounded in Constitutional requirements, to insure that pro se litigants are not impeded in their efforts to obtain justice in our courts. No more should be asked of a pro se litigant than should be asked of a licensed attorney.

Persons with claims to litigate cannot e singled out for a vastly different treatment and barred from court simply because they have failed to

satisfy an adjudicated obligation. Moses v. Hoebel, Okl. 646 P. 2d 601, 605 (1982).

The Minnesota courts erred in foreclosing Petitioner's right to proceed with discovery and to prepare for trial. The matter should be returned to the State Courts with directives:

1. To consider Petitioner's Motion under 60.02 of Minn. Rules of Civil Procedure as well as 60.01;
2. To permit Petitioner additional discovery to substantiate his claim regarding statute of limitations issues;
3. To permit Petitioner addi-

tional time, up to the time by which all discovery should be completed, to obtain suitable medical expert witnesses for those issues that require medical experts; and

4. to accord Petitioner with courteous and equal treatment, in connection with discovery matters and courtroom proceedings.

CONCLUSION

Petitioner* has done everything required of him as a responsible litigant. Respondents have done everything possible to Petitioner by procedural device, intimidation and misrepresentation. Respondents have grossly misused the Rules of Court and have disregarded standards of ethics and common decency, while driven by their obsession to crush Petitioner's claims. Through the course of these proceedings, in effectively denying Petitioner his "day in court," the Minnesota Courts have abetted Respondents.

In the interests of justice, for important public policy reasons, and for the foregoing reasons, Petitioner respectfully prays that a writ of cer-

tiorari issue to review the Order of the Minnesota Court of Appeals, filed June 4, 1986, and all related decisions and Orders.

*Petitioner has a BBA Degree, University of Minnesota, 1943; commissioned, U.S. Navy Reserve, 1943; former Commanding Officer, World War II, currently a practicing management consultant.

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

1. United States Constitution

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free excercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by

a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. State of Minnesota Constitution, Article 1

§4. Trial by jury

Sec. 4. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law. The legislature may provide that the agreement of five-sixths of a jury in a civil action or proceeding, after not less than six hours' deliberation, is a sufficient verdict.

3. Minnesota Rules of Civil Procedure for District Courts

RULE 60. RELIEF FROM JUDGMENT OR ORDER

Rule 60.01. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on

the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 60.02. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment (other than a divorce decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons: (1) Mistake, inadvertance, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.03; (3) fraud (whether heretofore denominated intrinsic

or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceedings was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order,

or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

4. Minnesota Rules of Civil Appellate Procedure, Rule 110.02

Subd. 2. Transcript Certificate. If any part of the proceedings are to be transcribed by a court reporter, a certificate as to transcript signed by the designating counsel and by the court reporter shall be filed with the clerk of the appellate courts, with a copy to

the trial court and all counsel of record within 10 days of the date the transcript was ordered. The certificate shall contain the date on which the transcript was requested; the estimated number of pages; the estimated completion date not to exceed 60 days; and a statement that satisfactory financial arrangements have been made for the transcription. Upon delivery of the transcript to the appellant, the reporter shall file with the clerk of the appellate courts a certificate evidencing the date of delivery.

5. Minnesota Code of Judicial Conduct, Canon 3, A.(4)

(4) A judge should accord to every person who is legaly interested in an proceeding, or his lawyer, full right to be heard according to law, and, consider ex parte or other communications con-

cerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonalbe opportunity to respond.

6. Code of Professional Responsibility, Canon 7,

EC 7-35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary procedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one

party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if thereis none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7-36. Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity

and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-38. A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be

punctual in fulfilling all professional commitments.

APPENDIX B -- THE DECISIONS BELOW

STATE OF MINNESOTA

IN COURT OF APPEALS

C4-86-743

Robert L. Krause,

Appellant,

vs.

Mark K. Kim, M.D., d.b.a.
Mark K. Kim, M.D., P.A.,

Respondent, ORDER

Metropolitan Medical Center,

Respondent,

Lawrence A. Farber, M.D., et al.,

Respondents.

Considered and decided by Popovich, Chief J. Foley, J., and Forsberg J.

Based upon the file, records and proceedings herein, and because:

1. Appellant seeks review of a March 21 order denying his motion to set aside judgments for alleged clerical errors; and

2. Respondents move for dismissal of the appeal and for attorneys' fees, pursuant to Minn. Stat. §549.21 and Minn. R. Civ. App. P. 138; and

3. The denial of a motion to set aside a judgment for alleged clerical error is not appealable, Cin v. Cin, 372 N.W.2d 10, 12 (Minn. Ct. App. 1985), pet. for rev. denied, (Minn. Sept. 19, 1985); and

4. The underlying judgments are final and have been affirmed on appeal to this court, see Krause v. Kim, 379 N.W. 2d 93 (Minn. Ct. App. 1985), pet. for rev. denied, (Minn. Feb. 14, 1986); and

5. The trial court found appellant continues to mount frivolous attacks on the judgments and we agree this appeal from a clearly non-appealable order was not taken in good faith;

IT IS HEREBY ORDERED:

1. The appeal is dismissed.

2. Respondents' counsel are each awarded $100 as fees pursuant to Minn. Stat. §549.21, for a total award of $300.

Dated: June 3, 1986.

BY THE COURT

/s/ Peter S. Popovich
Chief Judge

STATE OF MINNESOTA

IN SUPREME COURT

C4-86-743

Robert L. Krause,

Appellant,

vs.

Mark K. Kim, M.D., d.b.a.
Mark K. Kim, M.D., P.A.,

Respondent,

Metropolitan Medical Center,

Respondent,

Lawrence A. Farber, M.D., et al.,

Respondents.

ORDER

Based upon all files, records and proceedings herein,

IT IS HEREBY ORDERED that Robert L. Krause's motion for reconsideration of the denial of the petition for further review be, and the same is, denied.

IT IS FURTHER ORDERED that respondent's motions for attorney fees be, and the same are, denied.

Dated: September 22, 1986

BY THE COURT:

/s/ Douglas K. Amdahl
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

C4-86-743

Robert L. Krause,

Appellant,

vs.

Mark K. Kim, M.D., d.b.a.
Mark K. Kim, M.D., P.A.,

Respondent,

Metropolitan Medical Center,

Respondent,

Lawrence A. Farber, M.D., et al.,

Respondents.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the non-compliant petition for Robert L. Krause for further review be, and the same is, authorized.

IT IS FURTHER ORDERED that the petition for further review be denied.

IT IS FURTHER ORDERED that the motions of Dr. Lawrence A. Farber and Noran Neurological Clinic, P.A. and Mark K. Kim, M.D. d.b.a. Mark K. Kim, M.D., P.A. for attorney fees be, and the same are, denied.

Dated: August 20, 1986.

BY THE COURT:

/s/ Douglas K. Amdahl
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

C4-86-743

Robert L. Krause,

Appellant,

vs.

Mark K. Kim, M.D., d.b.a.
Mark K. Kim, M.D., P.A.,

Respondent,

Metropolitan Medical Center,

Respondent,

Lawrence A. Farber, M.D., et al.,

Respondents.

ORDER

Based on all the files, records and proceedings herein,

IT IS HEREBY ORDERED that Robert L. Krause's motion to accept the late filing of the appendix to his petition

for further review be, and the same is, granted.

Dated: July 23, 1986

BY THE COURT:

/s/ Rosalie E. Wahl
Associate Justice

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

****

FILE NO. 801270

Robert L. Krause,

Plaintiff,

vs.

Lawrence A. Farber, M.D. and Noran Neurological Clinic, P.A.,

Defendants.

****

FILE NO. 785809

Robert L. Krause,

Plaintiff,

vs.

Mark K. Kim, M.D. d/b/a Mark K. Kim, M.D., P.A., and Metropolitan Medical Center, a Minnesota non-profit corporation,

Defendants.

****

The above-entitled matter came on

for hearing before the undersigned on March 20, 1986, on the Motion of plaintiff for a rehearing of the Motions argued December 27, 1984, herein and for relief from the Judgments entered herein pursuant to this Court's Order for January 21, 1985.

Plaintiff appeared pro se. Robert E. Salmon, Esq., appeared on behalf of defendants Farber and Noran Neurological Clinic. Donna J. Blazevic, Esq., appeared on behalf of defendant Kim. Keith A. Dunder, Esq., appeared on behalf of defendant Metropolitan Medical Center.

The Court has considered the Memoranda and arguments of the parties and counsel, and has reviewed the entire file. Accordingly, the Court is fully advised, and

IT IS HEREBY ORDERED that

plaintiff's Motion is in all respects denied.

Robert E. Bowen
Judge of District Court

Date: March 21, 1986.

MEMORANDUM

The Court has carefully considered all of the arguments advanced by plaintiff in support of his Motion, and finds that they are without merit. These actions have been dismissed with prejudice by this Court, and the judgments of dismissal were appealed and affirmed by the Minnesota Court of Appeals, and the Minnesota Supreme Court has declined to grant further review. Accordingly, this Court consideres these matters closed.

R.E.B.